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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,965

03/31/2005

Oren Gavriely

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10/21/2009

DR. D. GRAESER LTD.

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EXAMINER

SMITH, PHILIP ROBERT

ART UNIT

PAPER NUMBER

3739

NOTIFICATION DATE

DELIVERY MODE

10/21/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

INFO@DRDGRAESER.COM

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<b>Office Action Summary</b>	<b>Application No.</b> 10/529,965	<b>Applicant(s)</b> GAVRIELY, OREN	
	<b>Examiner</b> PHILIP R. SMITH	<b>Art Unit</b> 3739	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12, 15 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 15 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

**Claim Rejections - 35 USC § 112, Paragraph One**

- [01] The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
- [02] Claim 13 has been cancelled and the rejection is accordingly withdrawn.

**Claim Rejections - 35 USC § 102**

- [03] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

- [04] The rejection of claims 12 & 15-18 under 35 U.S.C. 102(e) as being anticipated by Hill (6,929,600) are withdrawn. Claims 16-17 have been canceled and incorporated into claim 12. In the interview of 9/4/09, Applicant persuasively argued that Hill discloses a method wherein a video stylet is removed

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immediately after intubation; and that this does not anticipate a *prolonged* endotracheal intubation, as this would be understood by a skilled artisan.

[05] Claims 12, 15, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Pirak (5,400,771).

[06] With regard to claim 12: Pirak discloses a method of continuously monitoring changes in indications of vital functions of a patient,

[06a] employing a tube ("endotracheal tube assembly" 1/65) used to effectively convey fluids into and out of the body of said patient ("communicates with respirator machine" 6/39),  
wherein said tube is an endotracheal tube.

[06b] wherein at least one imaging sensor is incorporated in the anterior face of said tube ("[ultrasonic] transducer 80" 5/67), and wherein said sensor is coupled to a conduit, continuously acquiring signals and transmitting signals via said conduit ("tube 70" 5/53); said method comprises collecting said signals transmitted via said conduit and interpreting said signals and/or displaying said signals ("ultrasonic analyzer computer 84 generates a video signal transmitted to a video monitor 86" 6/2-4);

[06c] thereby performing said continuous monitoring of changes in indications of vital functions of said patient ("comparator 90 periodically checks..." 6/42);

[06d] wherein said tube is placed within said body of said patient for a substantial period of time, wherein said substantial period of time is a prolonged endotracheal intubation and wherein said continuous monitoring is performed during at least a substantial portion of said period ("during a subsequent surgical operation..." 6/40-52); and

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[06e] wherein said fluids are selected from the group consisting of: gases and liquids, and conveyed to sustain a vital function of said patient, concomitantly with said monitoring ("respirator" as noted above).

[07] With regard to claim 15: Pirak discloses that said signals are images ("video signal" as noted above).

[08] With regard to claim 18: Pirak discloses endotracheal intubation, as noted above.

### **Conclusion**

[09] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip R Smith whose telephone number is (571) 272 6087 and whose email address is philip.smith@uspto.gov. The examiner can normally be reached between 9:00am and 5:00pm.

[10] If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272 4764.

[11] Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Philip R Smith/

Examiner, Art Unit 3739